



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI-87-20

### FACTS:

You are an employee of state agency ABC. Prior to your appointment, you were a partner in a firm (Firm) which provides contractual services to state agencies and the human service providers which receive state agency funding. Upon entering state service, you took a leave of absence from the Firm. Under the terms of the leave, your equity and retirement interest with the Firm will be frozen, and you will not be receiving Firm benefits which are attributable to services performed by the Firm after you began service with ABC.

You also serve as an unpaid member of the board of directors of two corporations. The first, DEF, provides software development and information for the spot oil industry and contracts with oil companies. The second, GHI, is an investment banking company which finances private university intellectual property and out-of-state student housing. Neither of the corporations has any dealings with state agencies.

### QUESTIONS:

1. What limitations does G.L. c. 268A place on your ABC activities while you are on leave from the Firm?
2. While serving as a state employee, can you maintain your directorships with DEF and GHI?

### ANSWERS:

1. You are subject to the restrictions described below.
2. Yes.

### DISCUSSION:

You are a state employee for the purposes of G.L. c. 268A. Three sections of G.L. c. 268A are relevant to your questions.

- I. Limitations as ABC employee

Under G.L. c. 268A, s.6, absent an exemption, you may not participate as a state employee in any particular matter<sup>[1]</sup> affecting the financial interest of a business organization with which you have an arrangement for future employment. During the period of your leave of absence from the Firm, you have an arrangement for future employment with the Firm. Consequently, s.6 prohibits you from participating as a state employee in matters in which the Firm has a financial interest. For example, you may not review contracts between state agencies and the Firm, or recommend that such contracts be extended. The prohibition also extends to your participation in contracts between human service providers and the Firm, and in-state contracts made by other accounting firms which compete with the Firm for the contracts under review.

Because Firm contracts will customarily come before you, you must disclose to your appointing official and the Commission the fact that these contracts are pending. Your appointing official has three options:

1. he may appoint certain employees to review the contracts;
2. he may review the contracts himself or
3. he may exempt you from the prohibitions of s.6 by determining in writing that the Firm's financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the state expects from you, and by forwarding a copy of the determination to the Commission.

Absent your receipt of a written exemption from your appointing official, you must abstain from participating in the review of Firm contracts.

Under s.23(b)(3), you must avoid conduct which creates a reasonable impression that your official actions are unduly influenced by your status as a partner on leave. For example, because the Firm contracts with the Executive Office of Human Services (EOHS), you may create a reasonable impression of undue favoritism toward EOHS in your ABC activities. To dispel any such impression, you must disclose in writing to your appointing official the state agency and human service provider clients of the Firm. You must also avoid actually granting unwarranted privileges or exemptions of substantial value to agencies which contract with the Firm. See, G.L. c. 268A, s.23(b)(2).<sup>[2]</sup>

### 3. Limitations on your Outside Activities

Nothing in G.L. c. 268A prohibits your serving as an unpaid director of DEF or GHI, inasmuch as neither corporation has any current dealings with state agencies. Should either of the companies plan to conduct dealings with state agencies, you should renew your request for an advisory opinion. Based on the facts surrounding those future dealings, we will examine the application of the s.4(c) restrictions on your acting as a corporate agent in matters in which the state is a party or has a direct and substantial interest. Independent of the extent of state dealings by the corporations, you must refrain from using state resources for your private corporate activities. G.L. c. 268A, s.23(b)(2).<sup>[3]</sup>

DATE AUTHORIZED: June 8, 1987

[1] "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L.c. 268A, s.1(k).

[2] In the alternative, you ask how G.L. c. 268A would apply if you resigned from the Firm and terminated your leave of absence. While the restrictions of s.6 would no longer apply because you would not have an arrangement for future employment, you will remain subject to the provisions of s.29 discussed above.

[3] Inasmuch as your compensation from the Firm will be calculated based on services which you performed prior to your becoming a state employee, you will not be deemed to have a financial interest in, or to be receiving compensation from, the Firm's contracts with state agencies or vendors while you remain a state employee. See, G.L. c. 268A, s.4(a), 7.